

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA AT ELKINS**

**FRIEDRICHS HARRIS, ADMINISTRATOR OF
THE ESTATE OF EVAN M. HARRIS,**

Plaintiff,

v.

**CIVIL ACTION NO.: 2:16-cv-00046
JUDGE BAILEY**

**Q&A ASSOCIATES, INC.,
ANGELA SHOCKLEY, KEITH BISHOP,
MATTHEW SHOCKLEY, SANDY
SCHMIEDEKNECHT, and TAMMY ROBBINS.**

Defendants.

**DEFENDANTS' PARTIAL MOTION FOR AMENDED
SCHEDULING ORDER AND NEW TRIAL DATE**

COME NOW, Defendants, Q&A Associates, Inc. (hereinafter "Q&A"), Angela Shockley, Keith Bishop, Matthew Shockley, Sandy Schmiedeknecht, and Tammy Robbins (collectively "Defendants"), and move the Court to modify the current Amended Scheduling Order. Specifically, Defendants seek to vacate the Amended Scheduling Order discovery completion deadline of January 31, 2018 and all Amended Scheduling Order deadlines thereafter. Further, Defendants move the Court to continue the current July 2018 trial date. In support of their motion, Defendants state as follows:

1. On June 10, 2016, Plaintiff Friedrichs Harris, Administrator of the Estate of Evan M. Harris, filed the Complaint in this case. [EMCF Doc. 1].
2. Defendants' filed their Answer to the Complaint [EMCF Doc. 11] on September 19, 2016, and their Amended Answer on September 23, 2016. [EMCF Doc. 13].
3. On November 4, 2016, Defendants' filed Defendants Q&A Associates, Inc., Angela Shockley, Keith Bishop, Matthew Shockley, Sandy Schmiedeknecht, and Tammy Robbins' Motion to Compel Arbitration. [EMCF Doc. 19].

4. After the parties' briefed the issues regarding Defendants' Motion to Compel Arbitration, an evidentiary hearing on January 4, 2017, at 10:00 a.m. in Wheeling, West Virginia with Judge Bailey presiding. Defendants and Plaintiff called witnesses and admitted evidence for consideration by the Court.
5. On March 3, 2017, the Court issued a sealed Opinion and Order Denying the Motion to Compel Arbitration. [EMCF Doc. 41].
6. Due to the four-month time delay of discovery while briefing, arguing, and awaiting the written opinion of the Motion to Compel Arbitration, the parties filed a Joint Motion for Amended Scheduling Order and Defendants' Motion for New Trial Date [EMCF Doc. 55].
7. On May 5, 2017, the Court granted the parties Joint Motion [EMCF Doc. 56] and entered an Amended Scheduling Order on June 12, 2017 [EMCF Doc. 60].
8. According to the Amended Scheduling Order, a final pretrial conference is to be held on July 16, 2018 while the trial of this matter is scheduled to begin after jury selection on July 24, 2018.
9. Unfortunately, since entering the Amended Scheduling Order, the Defendants ability to proceed in discovery has been limited. Despite the best efforts of the parties, no depositions have been taken to date. This is the result of delays in producing documents by Plaintiff, assessments by both parties of the necessity of additional parties, representation of the intent to add Jennifer Randall Reyes and the eventual separate action against Jennifer Randall Reyes. As such, Defendants will be hard-pressed to present an adequate defense at trial due to circumstances beyond their control. Moving forward with trial at the end of July would be unnecessarily prejudicial to the Defendants and should be moved for the reasons set forth below.

10. Defendant Angela Shockley served her First and Second Sets of Discovery to Plaintiff on March 15, 2017 and March 22, 2017 respectively. [EMCF Docs. 46 and 47]. The Plaintiff requested multiple extensions, which were granted by the Defendants based upon Plaintiff's counsel's health. After the Defendants' continued to grant extensions and allow for additional time to respond to discovery, Plaintiff produced documents responsive to Defendant Angela Shockley's First Set of Discovery on August 25, 2017, more than five months after such requests were first served. See Ex. A emails. The documents produced were extensive and included authorizations. The Defendants then began the process of requesting additional records with the authorizations received from Plaintiff and encountered additional delays in obtaining documents with the authorization due to a clerical error on the authorization. See Ex. B email.
11. After receipt of Plaintiff's document production, counsel for Defendants requested an extension of the deadline for joinders and amendments to allow counsel time to review the document production of Plaintiff. Plaintiff's counsel agreed and stated that he intended to join Jenn Randall as a defendant to the case. Thereafter, the parties jointly filed a Motion to Extend the Joinder and Amendment Deadline on September 28, 2017. [EMCF Doc. 63]. The Court granted this motion on September 29, 2017, which extended the deadline until November 15, 2018. [EMCF Doc. 65]. The parties agreed to not take depositions until this deadline passed to allow any potential parties to be joined. Defendants reviewed the discovery produced by Plaintiff and did not move for joinder of any parties. Plaintiff also did not move to amend the Complaint or join any new parties.

12. A. On December 29, 2017, counsel for Defendants sent a letter to Plaintiff's counsel requesting dates and desired locations for the depositions of Friedrichs Harris, Kathy Harris, and Emily Harris. See Saad December 29, 2017 letter, attached as Exhibit C. A tentative date of January 15, 2018 was set, but the parties agreed to cancel the deposition due to Plaintiff's counsel's need for medical procedure on that date. See Ex. D email. Attempts to re-schedule the deposition were unsuccessful.
13. Shortly thereafter, on January 23, 2018, Plaintiff's counsel sent a Notice of Claim to Jennifer Randall (now Jennifer Randall Reyes) of Big Top Counseling and Consulting, LLC.
14. On January 26, 2018, counsel for Defendants sought to extend the discovery deadline to allow time to depose Plaintiff, Defendants and key witnesses. See Ex. D email. However, the Defendants did not receive a response from Plaintiff's counsel.
15. During this time, progress in discovery stalled in, what Defendant's believed was, anticipation of an inevitable joinder of Jennifer Randall Reyes of Big Top Counseling and Consulting, LLC.
16. A revised Notice of Claim including a certificate of merit was sent to Ms. Reyes on March 7, 2018.
17. After waiting for an amended pleading to be filed, Defendants filed their Motion for Summary Judgment on March 8, 2018 based upon Plaintiff's failure to disclose an expert. [EMCF Doc. 67]. After briefing of the motion concluded, the Court entered an Order denying Defendants Motion for Summary Judgment on May 16, 2018. [EMCF Doc. 89].
18. During the pendency of Defendants' Motion for Summary Judgment, Plaintiff filed a separate action in the United States District Court for the Northern District of

West Virginia, Civil Action No. 2:18-cv-39 (“Second Action”) against Jennifer Randall Reyes and Big Top Counseling and Consulting, LLC. See Complaint, attached as Exhibit E. This Second Action arises from the same set of facts and circumstances as the present matter. It describes actions by the Defendants as well as Ms. Reyes and Big Top Counseling and Consulting, LLC. Notably, under Count III: Joint Venture with Others, Plaintiff claims that defendants Reyes and Big Top Counseling and Consulting, LLC “were in a joint venture with Q&A Associates, Inc., Angela Shockley, Keith Bishop, Matthew Shockley, Sandy Schmiedeknecht and Tammy Robbins, all of whom are named Defendants in a civil action pending before U.S. District Court Judge Bailey and bearing Civil Action No. 2:16-cv-46 to provide programs and services for profit and benefit to each of the joint venturers.”

19. Moreover, in the Prayer for Relief in Plaintiff’s Second Action, Plaintiff requests that the Court enter “[a]n Order granting consolidation of this action with Civil Action No. 2:16-cv-46,” the present matter.
20. Although this case is set for trial on July 26, 2018 and the parties have been preparing for the trial of this matter, there is substantial discovery that needs to occur. Most notably, the Plaintiff, Defendants, and key fact witnesses to this case need to be deposed.
21. Furthermore, although this Court set a mediation deadline of April 9, 2018, these parties have not been able to mediate this case because the parties have not conducted sufficient discovery to allow for a meaningful mediation to occur.
22. Based upon the procedural dilemma described above involving both need for additional discovery and a multiplicity of suits, Defendants request that the discovery deadline in the Amended Scheduling Order and all deadlines thereafter be vacated and trial in this matter be continued to allow adequate time to conduct

depositions and other necessary discovery without uncertainty as to whether parties will be added. In addition, consolidation with Civil Action No. 2:18-cv-39 appears necessary to properly adjudicate Plaintiff's claim as each action includes identical facts and allegations.

WHEREFORE, Defendants, Q&A Associates, Inc. (hereinafter "Q&A"), Angela Shockley, Keith Bishop, Matthew Shockley, Sandy Schmiedeknecht, and Tammy Robbins (hereinafter "Defendants"), and move the Court for a Second Amended Scheduling Order and a new trial date be scheduled for this matter.

DEFENDANTS,

By Counsel

/s/ Lindsey M. Saad

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CERTIFICATE OF SERVICE

I certify that on this 29th day of May, 2018, I filed electronically via CM/ECF a true copy of "DEFENDANTS' PARTIAL MOTION FOR AMENDED SCHEDULING ORDER AND NEW TRIAL DATE" with notice of the same being electronically served by the Court, addressed to the following:

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/s/ Lindsey M. Saad
Lindsey M. Saad (WV Bar No. 11155)